IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 213 of 2003

LR'S OF BABULAL
V/S
SMT. PREM KANWAR

Mr. SUDESH K. GUPTA, for the appellant / petitioner

Mr. SURESH SHRIMALI, for the respondent

Date of Order : 21.7.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant, and perused the impugned judgments.

It is contended by the learned counsel for the appellant, that on 3.8.2000 he has filed an application in the learned lower Appellate Court, for appointment of the Commissioner, but that application has not been decided. Learned counsel was requested to read that application, and after reading that application, in my view, non disposal of that application has no bearing on the controversy involved in the present case.

Both the learned courts below have found, that the appellant has encroached upon the land far beyond the land covered by his title deeds, being the Patta and the

Sale Deeds, and it is on account of that encroachment, that the windows and doors of the plaintiff have been closed. May be that the plaintiff may have constructed upper stories on her building, but then, therefrom it cannot be said that the cause of action in the suit did not continue to exist.

In my view, the findings recorded by the learned courts below on the question of the extent of the land of the appellant, to be belonging to him, under the documents of his title, is not vitiated on any of the grounds available under Section 100 C.P.C. That being the position, since the appellant has committed encroachments, and thereby had obstructed the door and window of the plaintiff, the impugned decree does not require any interference in this appeal. The same is, therefore, dismissed summarily.

(N P GUPTA),J.

/Sushil/